THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.Nos. 10799 and 13966 of 2006

Dated: 06.10.2007

W.P.No.10799 of 2007

Between:
K. Rambabu and others.

..Petitioners.

and

The Mandal Revenue Officer, Vijayawada Rural Mandal, Krishna District, Vijayawada.

..Respondent.

W.P.No.13966 of 2007

Between:
Chukkapalli Venkatramaiah.

..Petitioner.

and

The Mandal Revenue Officer, Vijayawada Rural Mandal, Krishna District, Vijayawada.

..Respondent.

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.Nos. 10799 and 13966 of 2006

COMMON ORDER:

Since the question involved is the same, both these writ petitions are being disposed of by a common order.

2. Heard Sri V.H.V.R.R.Swamy, the counsel representing the writ petitioners, Learned Government Pleader for Civil Supplies and

Sri K.Vinay Kumar.

3. These writ petitions are filed praying for issuance of a writ of mandamus declaring the action of the Mandal Revenue Officer by his proceedings, dated 31.03.2006, as one without jurisdiction and are liable to be set aside and pass such other suitable orders.

4. Counter affidavits are filed in both these writ petitions.

5. In W.P.No.10799 of 2006, it is stated by the petitioners that the Mandal Revenue Officer issued licence under Andhra Pradesh Petroleum Products (Licence and Regulation of Supplies) order, 1980 and the licences were issued in favour of the persons to distribute the kerosene to the card holders by hawaking. The Government of Andhra Pradesh not interested to continue the system of hawaking. The Government issued G.O.Rt.No.479 Food and agriculture (C.S.IV) Department dated 19.04.1983, later issued circular letter No.B2/934/GT dated 01.01.1987 issued by the Commissioner of Civil Supplies, Hyderabad and Government

Memo No.1584/CS-II/94 Food and Civil Supplies (CS) Department dated 26.04.1994 licence to kerosene hawakers. It is also stated that the hawkers and fair price shop dealers filed these writ petitions in the light of the aforesaid memo. Initially the kerosene was not listed in the schedule annexed to the Andhra Pradesh scheduled Commodities (Regulation of Distribution by Card System) Order, 1973. Thus the kerosene also added as a schedule commodity. It is stated that the hawaker system is continuing in distribution of kerosene. The authority under law is the Mandal revenue Officer authorized to issue licence to the dealers or hawaker APPP (L & RS) Order, 1980. The system of hawakers is continuing even to this day. It is stated that the Government had taken a decision to regularise the hawakers and NR dealers by converting them into fair price shop dealers. The Commissioner of Civil Supplies No.PDS.II (G)/2847/05, dated 19.03.2005 stating that conversion of existing NR shops as fair price shops. Thus the intention of the Government is clear that they want to convert the all NR shops as F.P.shops. As per the Government memo the hawaker system is continued till this day. Whenver the hawaker is died they made it as custom to tag the hawaker shop to the existing near by hawaker. As such, they were appointed as incharge hawakers in the place expired hawakers. Thus they are continuing as hawakers and also working as incharge hawakers till this day. There is no dispute or complaint against the existing hawakers in their distribution and also in the distribution of incharge hawakers. Thus, they proved that they are capable to do the work entrusted to them. It is also stated that the first respondent with an ulterior motive and with malafide intention issued the order Roc.No.24/2005 dated 31.03.2006 served on

them on 15.4.2005 by making incharge arrangement to the demised hawakers handing over to the fair price shop dealers. That the respondent intentionally done thing to avoid the hawakers by this order. The intention of the MRO is clear that he is intended to close the system of hawakers. Manda Visweswara Rao and others vs. D. Venkateswara Rao and others reported in 2002(3) ALT Page 234 the Division Bench of this Court held the judgment of the single judge no bar under the statute or administrative instructions contained in the G.O. circular and memo referred to above to grant licences to the kerosene hawakers to distribute the kerosene to the consumer and card holders-order of the single judge directing the authorities to supply kerosene to card holders through authorized fair price shop dealers only not legal. Thus, the intention of this Court is clear that the hawaker system should be continued. Thus, the respondent has no power or authority to give incharge to the fair price shop through order dated 31.03.2006 and it is null and void.

6. W.P.No.13966 of 2006 also had been filed for similar relief, almost with the same averments made in the affidavit filed in support of the writ petition. Certain dealers, in whose favour the distribution had been entrusted, came on record by impleading themselves as parties. Though separate counter-affidavits are filed, since the question involved being the same, the averments made in both the counter-affidavits also appear in similar.

7. It is stated in the counter affidavit filed in W.P.No.10799 of 2006 that there are 37 fair price shop dealers and 60 kerosene dealers in vijaywada Rural Mandal. Out of 60 kerosene dealers there are 8 death cases arisen. In case of vacancies arises in fair price shops the same were filled up by the Revenue Divisional

Officer, Vijayawada, appointing authority to distribute the essential commodities to avoid the inconvenience to the card holders. In these 8 vacancies of kerosene dealers due to the death, the nearest hawkers kept as incharge and the vacancies of the kerosene dealers were not filled up because of ban orders of the Government Circular/Memo No.1584/CS.II/94 F& CS Department dated 26.04.1994. It is also stated that aggrieved by the action of the respondent to keeping the adjacent kerosene hawakar, the F.P.shopdealers of that particular locality of the same village approached the collector Krishna, on 18.01.2006. After receiving representation from Fair Price Shop Dealers Association the issue regarding incharge arrangements had been enquired noticing the discrepancies. Accordingly in pursuance of the instructions of the government in G.O.Ms.No.419, dated 19.04.1983 the guidelines were issued regarding the distribution of kerosene hawkers by the new hawkers should not be appointed in future. The Government already stopped issuing of licences in respect of hawking kerosene by non retail dealers, as per the policy of the Government and various instructions from the Commissioner, the entire public distribution system should be under one roof i.e., through F.P. shops only. In the circumstances explained and as per the instructions time to time from the Government, the F.P.shop dealers of that particular area are being kept incharge in place of the deceased hawkers for distribution of kerosene oil vide this office proceedings in Rc.C.24/2005, dated 31.03.2006. After careful examination, the Government of India as well as the State Government came to conclusion to facilitate the citizens brought

kerosene being as an essential commodity under the roof of F.P.shop by tagging up licence holders with F.P.shops. In this regard Central Government issued memo dated 19.01.1990 and State Government also issued memo in 1994 read with another circular dated 02.08.1984. In these circumstances the F.P.shop dealers filed W.P.No.20474 of 2004 for implementation of Government Memo dated 26.04.1994. Accordingly, the writ petition is disposed of by this Court directing the Government to implement the memo. In pursuance of orders passed in the writ petition, the Commissioner for Civil Supplies issued the orders implementing this Court directions not to revise licences of nominated retailers. The present writ petitioners are incharge to the deceased licence holders and they are not having any basic right to demand to question the proceedings of the respondent because they were given only as incharge till the permanent arrangements are made by the Government. By the death of licence holders the licence is invalid and the incharge person will not accrue any basic right to file this writ petition. The proceedings are issued in pursuance of policy of the State and Central Government for the conversion of cardholders. The policy of the Government is to bring all essential commodities under common roof through F.P.shop only. It is stated that the licence should be continued by renewing the licence is not applicable in this case, because in this case the licence holder is died. Hence, the question of renewal of licence of the deceased person do not arise. Wherever the licence holder dies the quantity of kerosene will be handed over to the fair price shop dealer to facilitate the

card holders as Government policy Commissioner of Civil Supplies reference No.E2/1285/2000, dated 14.11.2000 as per the orders passed by this Court in W.P.No.8201 of 1994 dated 18.03.1996. It is also stated that the petitioner was never appointed as incharge as per records that the nearer hawker will be incharge to the deceased licence holders to the nearest licence holders will become incharge as temporary arrangements to avoid inconvenience to the card holders. It is stated that the regular quota of the petitioner was not disturbed and only temporary arrangements made to avoid in convenience to the card holders. Appointment of incharge does not arise. Hence, petitioner is no way connected with kerosene and the petition may be dismissed in limini. It is also further stated that the allegations that the respondent with ulterior motive and malafide intention issued proceedings on 31.03.2006 served on 15.04.2006 etc., allegations are false. As per the instructions of Government, the respondent handed over the kerosene quota of the particular locality to the fair price shop dealers. The other allegations also had been denied.

8. In the counter affidavit filed in W.P.No.13966 of 2006 the averments made in paras 2,3,4,5 and 6 are on similar lines as that of counter-affidavit filed in W.P.No.10-799 of 2006.

9. Submissions at length were made in relation to the right, which had been asserted or claimed in these writ petitions.

Sri V.H.V.R.R.Swamy, learned counsel for the petitioners placed strong reliance on the decision of the Division Bench in **MANDA VIwESWARA RAO v. D. VENKATESWARA RAO**[1]**.** It is no doubt true that the Divisional Bench while dealing with Andhra

Pradesh Scheduled Commodities (Regulation Distribution by Card System) Order, 1973 Clause 2(b) in the context of G.O.No.479, Food and Agriculture Department and also the Circular, observed at para 6 as hereunder:

> "As could be seen from the definition of the term 'authorised fair price shop', it is permissible for the government and governmental authorities to sell all or any of the scheduled commodities through authorized fair price shops. In other words, it is not that the order imposes an obligation on the respondent-authorities to sell all scheduled commodities to the cardholders or consumers only through fair price shops and not otherwise. Therefore, we find that there is no statutory bar for the respondent-government authorities to grant licences to the kerosene hawkers to distribute kerosene to the consumers. If there is no such bar under the statute, the next question is whether such a bar is created by administrative instructions contained in G.O.Rt.No.479 dated 19.04.1983, the Circular dated 01.01.1987 and the memo dated 26.04.1994.

G.O.Rt.No.479 dated 19.04.1983 had been referred to, and the Division Bench also observed at para 8 as hereunder:

> "The above guidelines make it very clear that the Government has not prohibited granting licences to the kerosene hawkers. It permits the authorities to grant licences to the kerosene hawkers also. This G.O. was followed by the circular dated 01.01.1987 issued by the Commissioner of Civil Supplies, which reads as follows:
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> "It has come to the notice of the Government that in some cases consumers have to travel long distance even up to 5 km. For kerosene, though there is a F.P.shop located in a place nearer to their residence. Obviously in such cases the F.P.Shop is not entrusted with distribution of kerosene. In order to facilitate the consumers to get kerosene from the F.P.shops also along with other essential commodities, the A.P.Scheduled Commodities (Regulation of Distribution by Card Systems) Order 1973 was amended to include kerosene as one of the items to be sold through F.P.shops. G.O.Rt.No.1050 F & A (CS.II) Department, dt.24.07.1987. The Collectors/Chief Rationing Officer, Hyderabad may take action to distribute kerosene through F.P.shops, wherever necessary in order to ensure that consumers are not required

to travel long distances, for a single commodity viz., kerosene. They are also requested to take special attention to ensure that in case where the consumers have to travel long distances supply of kerosene from the F.P.shops located nearer to their residence is ensured".

While dealing with the latest policy of the Government in the matter of distribution of kerosene, the Division Bench observed at para 9 as hereunder;

> "In the reference 1st cited, orders were issued that those hawkers who were genuinely selling kerosene as on 1.03.1983 and whose record might be clean might be considered for attaching cards and giving specific place of business where they could sell kerosene. It was also made clear that such hawkers could be converted as nominated retailers and that there should be no further expansion of hawkers.
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> It has now come to the notice that still in some districts hawkers in kerosene are still existing without licence.
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> The intention of the Government is to make available all essential commodities including kerosene from one roof i.e., the fair price shop. However, since the hawkers have been dealing in kerosene since a long time, Government are of the view that such of the hawkers who are existing as on date may be licensed. They should be attached the cards of the fair price shops, which do not have kerosene. These licensed hawkers should keep their push carts at the fair price shops and deliver kerosene on cards, duly maintaining accounts and records as per conditions of licence.
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> All the Collectors shall ensure that such of the hawkers who are distributing kerosene without any licence as on date are licensed immediately with the conditions stipulated above. The Collector and Chief Rationing Officer, Hyderabad are also informed that there should not be any appointment of new hawkers in future. They are also informed that there should not be any appointment of new kerosene retailers (N.Rs) also in future.

While further dealing with the aspect whether a writ of mandamus would lie, the Division Bench observed at para 10 as hereunder:

> "Para 3 of the above Government Memo makes it very clear that the hawkers who were existing as on the date of the issuance of the Memo may also be licensed. Thus, it is quite clear that none of these administrative instructions issued by the Government from time to time prohibit grant of licences to the hawkers. The Circular dated 01.01.1987 also does not impose any bar on the respondent-authorities in granting licences to the hawkers. On the other hand, as pointed out supra, the administrative instructions clearly provide that the hawkers who are existing as on the date of issuance of the Government Memo dated 26.04.1994 may also be licensed. In that view of the matter, the relief sought by the writ petitioners to issue directions to the respondent-authorities to distribute kerosene only through authorized fair price shop dealers and not to grant licences to hawkers to distribute kerosene, cannot be granted. It is well settled that no mandamus will lie to an authority unless it is shown that the authority is bound by a legal obligation to do a thing or refraining from doing at thing and it has breached such obligation. The writ petitioners have utterly failed to trace the obligation of the respondent authorities not to permit the hawkers to distribute kerosene to the cardholders/consumers, with reference to any law or administrative instructions issued by the Government.

10. In the light of the facts and circumstances, as can be seen from the respective stands taken by the parties, this Court is of the considered opinion that there is no enforceable legal right as such available to the writ petitioners to be agitated in the present writ petitions. However, it is needless to say that the respondents are at liberty to consider the cases of these petitioners in the light of G.O.s and the Circulars governing the field depending upon the facts and circumstances. Except making this observation, no other relief can be granted in favour of the writ petitioners.

11. Both the Writ Petitions are accordingly disposed of in the light of the observations made in the decision of the Division Bench referred to supra. No order as to costs.

P.S.NARAYANA, J

Dated: 06.10.2007

sj

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[1] 2002(3) ALT 234 (D.B.)